Statement of
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Hearing on How Can We Maximize Private Sector Participation in Transportation?
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Good morning, Mr. Chairman and Members of the Subcommittee. I am pleased to appear today before the Subcommittee to discuss private participation in transportation. This hearing is especially timely in light of the pending reauthorization of surface transportation programs.

OVERVIEW

Few things have as great an impact on economic development, growth patterns, and quality of life as transportation. Improved highway and transit facilities help national, state, regional, and local economies grow by increasing productivity, attracting new businesses, and providing access to new markets. A healthy transportation sector is essential to President Bush's efforts to keep America on track for a more prosperous future.

One way to ensure a vibrant transportation sector is to encourage private participation in the public sector. The U.S. Department of Transportation is committed to providing a greater role for the private sector in transportation services and infrastructure investment. In fact, the private sector already plays an important role in research programs, such as Intelligent Transportation Systems (ITS), which are based on cooperation between the public and private sectors. Increasing private sector involvement in DOT programs is evident in the Bush Administration's surface reauthorization proposal – the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 (SAFETEA). A key ingredient of this proposal is innovative financing -- in the context of increasing investment capital for transportation projects and better management of the system.

The Administration's intercity passenger rail reform proposal, the Passenger Rail Investment Reform Act, also seeks to increase opportunities for the private sector by introducing competition into the provision of passenger rail services. Through a competitive selection of service operators, the States could assure themselves that they are getting a quality product and a fair price, and the traveling public would benefit by obtaining more choices and better service. This creates a system where the marketplace, with its prices and passengers, drives service, rather than a system driven by politics.

The private sector also plays a key role in operating essential elements of the Nation's transportation system. Our national freight rail network, financed principally by private investment dollars, has demonstrated the economic benefits that derive from appropriate investments to meet the demands of new and emerging markets. The Class I railroads report that from 1980 through 2002, they have invested $148 billion on infrastructure, which has positioned them to be a major contributor to the growth of the U.S. economy. Additionally, private carriers, such as intercity bus services, provide an important link in our transportation system.

INNOVATIVE FINANCE

Improving the transportation system of one of the fastest growing economies in the industrialized world presents significant challenges. As robust as our national transportation networks are, they are aging and increasingly being operated at or above capacity. Domestic and international trade growth is even faster than overall economic growth and certainly faster than capacity is being added to our transportation systems.   Congestion is worsening on our highways, at our airports, in our skies, and at our seaports. This congestion represents a significant and growing risk to our economy.

SAFETEA lays the foundation for reforming the way Americans invest in and use our surface transportation system. By giving States new tools to manage congestion, raise additional revenue directly from users, attract private capital to highway and mass transportation infrastructure, and leverage existing resources more efficiently, the President and the Department recognize that the transportation system of the future must be more responsive to customers and more receptive to innovation than it is today. We have seen this shift take place in other network services like telecommunications, and there is no reason we cannot see it happen with our surface transportation system.

The need for investment capital for transportation projects is the driving force behind the push for innovative financing. We need to find new sources of investment capital to finance our Nation's transportation infrastructure system, including developing private and public sector capital. DOT is promoting a number of innovative financing initiatives in order to respond to the shortfall in conventional public funding, by supplementing traditional financing techniques and directing resources to transportation investments of critical importance. Specifically, this is accomplished by fostering public-private partnerships; drawing on the public's willingness to pay direct user charges for transportation benefits and services (e.g. tolling and value pricing); leveraging new sources of capital (e.g. private activity bonds); enabling additional transportation facilities to be developed more quickly and at less cost than would be possible under conventional public procurement, funding and ownership; and more flexible financing options (e.g. Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA) and State Infrastructure Banks (SIBs)). We cannot limit ourselves to one or two financing mechanisms; but, rather, we need to have a mix of different financing mechanisms at our disposal. At the same time, the Department is always vigilant to ensure that publicly sponsored innovative finance tools do not crowd out financing by the private sector.

The Alameda Corridor is an example of a successful project that was funded through an innovative blend of public and private funding sources. Part of the funding for that project came from a $400 million Federal loan. The Alameda Corridor Transportation Authority repaid the loan with interest in April 2004, 28 years ahead of schedule. By repaying the loan 28 years ahead of schedule, the Alameda Corridor Transportation Authority saved approximately $65 million. The repayment is an indication of the project's initial success and revenue-producing potential. Additionally, studies estimate that more than 2 million jobs nationwide are associated with international trade moving through the ports of Los Angeles and Long Beach. Building the corridor created 10,000 construction jobs in the Los Angeles area. This evidence illustrates the importance of the Alameda Corridor project to the local, national, and global economy.

The Nation's highways are vital corridors for our economic and social progress. The cooperation between Federal, State, and local governments, as well as private entities, makes toll facility financing and construction a viable resource alternative, as we move further into the 21st century. Potential implications of this effort go far beyond the simple question of how will we pay for the construction of transportation infrastructure in the future, but also confront the nature of the Federal/State relationship, the level of private sector participation and competition in the national transportation system, and the degree to which we can improve operational efficiencies.

PUBLIC-PRIVATE PARTNERSHIPS

Toll financing concepts have also helped to promote public-private partnerships because the private sector is willing to invest in highway facilities if there is a high probability of earning a reasonable return on its investment – this would most likely be done through the collection of tolls. A successful toll road project can be built with virtually any mix of public and private financial sponsorship. The Administrator of the Federal Highway Administration (FHWA) has identified public-private partnerships as being an important element of the Department's ability to reduce congestion and preserve our transportation infrastructure.

Promoting innovation is not new to FHWA. For decades, FHWA has encouraged increased private sector participation in the project planning, design, construction, maintenance, and operation of highways and bridges. The private sector has expertise often not available to the public sector. It can bring innovation, flexibility, and efficiencies to many projects. Public-private partnerships enable private firms to take advantage of efficiencies such as simultaneous design and construction. Several States and private ventures have also asked for FHWA's guidance in implementing public-private partnerships in which the private sector could assume a greater role in project development, financing, and operations, and how these new arrangements will be treated under Federal laws affecting highway projects. Together the Department and FHWA are also conducting several workshops around the country to assist states and the private sector in developing public-private partnerships across all modes. These workshops are intended to help states and locals interested in public-private partnerships to overcome barriers and to better understand where and how such partnerships can be initiated. FHWA continues to actively encourage States to explore and employ opportunities for innovation at all stages of transportation projects.

Since the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), less than half the States have public-private partnership enabling legislation. Both public and private toll roads may be an additional means of financing and constructing highway facilities in the near future. The extent to which public-private partnerships become a major force in highway finance will depend on the ability of the individual public-private ventures to overcome existing institutional barriers.

INTERCITY BUS INDUSTRY

Private carriers provide an important, if often overlooked, link in the intermodal chain of personal movements, that is, intercity bus services. The transportation community's interest in the private, intercity bus industry is well placed. The industry plays a vital role in the supply of the Nation's publicly available transportation services, with the potential to provide even more. Throughout the country, in every State and in most travel markets, the private bus industry enhances the Nation's mobility by providing one or more of its broad array of services: in regular route service between cities; in commuter and shuttle markets; as an intermodal connector to air, intercity rail passenger, and transit operations; in charter, tour, and sightseeing markets; and in much of rural America -- as the only available public transportation option.

The breadth and depth of the industry is significant. Its dozens of large carriers and its more than 3,000 small and mid-size carriers operate a total fleet of 35,000 vehicles. Its services provide direct connections at more than 200 intermodal terminals. It carries some 40 million passengers per year in the intercity bus market alone (compared with Amtrak's 24 million rail passengers), and it carries more than 500 million passengers annually across its shuttle, commuter, charter, tour, and other markets. In the process, it employs more than 150,000 people and generates $5 billion per year in carrier revenues. The opportunities for closer public and private sector cooperation in the area of bus passenger services are considerable.

The Administration's SAFETEA legislation recognizes this potential and supports several initiatives aimed at strengthening the industry's role in the national transportation network. The most prominent is an $85 million capital grant program for intercity bus intermodal facilities, and it includes making intermodal service information improvements an eligible grant expense. Replicating an Airport Improvement Act provision that ensures intercity bus access to airport terminals to the maximum extent practical, SAFETEA would also require intercity bus access to other publicly funded intermodal passenger facilities. Finally, SAFETEA also proposes a significant increase in funding the Federal Transit Administration's (FTA) rural transportation program, which would increase amounts available specifically for intercity bus service (Section 5311(f)) by approximately sixty percent. We are very hopeful that Congress will pass these provisions.

More can be done, however, to capitalize on the potential of the private intercity bus industry. In addition to our support for legislative changes, the Department is considering an array of program and policy measures that could improve private bus industry presence in the Nation's mix of publicly available transport services. For example, to address potential competition issues between private bus companies and public transit operators, we expect to review service contract and fleet deployment matters across a spectrum of intercity, shuttle, commuter, charter, and rural bus services. In terms of access to intermodal facilities, we are examining the consistency, fairness, and enforcement of the Department's modal administration policies that affect bus access to intermodal facilities. And in the area of better traveler information, we are exploring ways to standardize and expand the availability of intercity bus service information through electronic data sources.

TRANSIT AND THE PRIVATE SECTOR

The history of public transportation in the United States, or mass transit as it is known to many, is a history of private sector involvement in the movement of people to work, to recreate, and to build and enjoy livable communities. Before the transcontinental railroads were built, private entrepreneurs were providing basic mobility to our cities and towns. From the horse-drawn trams of the earliest years, through the building of capital-intensive subway and surface rail lines in New York City, Boston, and Chicago, to the numerous trolley and bus lines that crisscross large and small communities across the country, the private sector has led the way and remains a partner in government efforts to this day.

Until World War II, mass transit was the dominant means of transportation for many if not most people, particularly in our larger cities. But with the increased wealth of the average citizen and the increasing use of private automobiles, public transportation ridership declined steadily and private mass transportation companies began to fail at an alarming rate in the 1950's and early 60's. Congress recognized that the continued health of our urban areas required increased Federal involvement, with mass transit to play a critical role. Thus, in 1964, the Urban Mass Transportation Administration (UMTA), now called the Federal Transit Administration (FTA), was established in the Department of Housing and Urban Development. Unlike other DOT programs grounded in the Commerce Clause of the Constitution, the Urban Mass Transit Act of 1964 (UMTA) (Public Law 88-365) is grounded in the Welfare Clause. As a "welfare clause" agency, FTA's ability to exert influence over the transit industry is limited to setting terms and conditions over the use of Federal grant funds. Therefore, unlike agencies with authority grounded in the Commerce Clause, FTA has very limited authority to regulate.

From the outset, UMTA's authorizing legislation recognized the value of this history and required both maximum feasible participation of the private sector in planning the provision of mass transportation services assisted by UMTA, as well as strong protection of private transportation companies providing charter, school bus, and sightseeing services, which, by statute, are expressly excluded from the definition of public transportation. Recipients of transit assistance must agree, as a condition of FTA funding, that they will not use FTA-funded assets for such services in competition with the private sector. FTA has regulations in place to enforce these private sector participation and protection requirements. Through continuing information and outreach FTA ensures the rules are well understood by all parties. For charter bus service, no FTA recipient can provide the service if there are willing and able private providers to do so, with some exceptions. Any such service must be incidental to, and not interfere with, the mass transit purposes of the assets acquired with FTA assistance. No exclusive school bus service can be provided, although transit operators do carry students, like any other passenger, and on mass transit routes designed to include their needs, so-called "tripper" service. Under no circumstances can such service be a closed-door service available only to students, i.e., it must be regular mass transit service open to the general public.

Understandably, there will be occasions when private providers believe that the public sector is unfairly or illegally competing with them. During the past three fiscal years, FTA has received roughly a dozen charter bus complaints each year, a relatively small number given the approximately 2000 FTA recipients subject to the charter regulation. Pursuant to the Conference Report accompanying H.R. 2673, FTA will soon release a report on charter service, which revisits the relevant regulatory framework and analyzes how regulation can effectuate the statutory prohibition.

CONCLUSION

The Department will continue to look for opportunities to strengthen the role of the private sector in the national transportation network. The Administration's SAFETEA proposal includes a number of important initiatives to inject more capital, both public and private, into the transportation system through innovative financing techniques. But to derive the greatest benefit from value pricing mechanisms for congestion management and facility improvement, and to access resources for infrastructure financing beyond State and Federal government funding, States need the ability to encourage private sector participation in surface transportation infrastructure financing.

I want to be clear about where the Bush Administration, the Department, and Secretary Mineta stand. We are for public-private partnerships. We support them and we want to make them much easier to implement. Strengthened public-private partnerships are key to the Administration's innovative finance reauthorization proposals for surface transportation.

At DOT, we are doing all we can to encourage innovative financing and public-private partnerships, and to remove constraints that hinder projects. We do not want to stifle innovation and creativity, as we carry out our duties to protect the public interest. Competition is an incubator of innovation. The Administration's SAFETEA reauthorization proposal will give States more options and flexibility for transportation solutions and will take the first steps toward fundamentally reforming the way Americans purchase transportation infrastructure. The intercity bus industry is a vital component of our transportation network, and it is important we continue to ensure its active role in communities throughout the nation. We must continue to work together to maximize public and private resources for transportation and the role of the private sector in the provision of mass transit and intercity services.

Mr. Chairman, I again thank you for this opportunity to appear before you today. I will be pleased to answer any questions you may have.